IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.l305 of 2005

Smt Parvatibai S Aasaba and anr...Petitioners
vs
Shri Bhavic Vitthal Samaj
Kolhapur Public Trust and ors. .. Respondents

Mr. Amit B Borkar for petitioners
Mr M R Katikar for respondent nos 2 to 2l

CORAM: A.P.SHAH J.

Dated 27.l0.2005

P.C:

. Rule. Learned counsel for the respondents waive service. By consent, rule is made returnable forthwith.

2. This petition under Art 227 of the Constitution of India takes exception to the order passed by the trial court rejecting the Application Exh l9 preferred by the petitioners- defendants for setting aside no written statement order and for taking the written statement on record. By the impugned order the trial court has held that the petitioners have failed to make out a sufficient cause for not filing the written statement within reasonable time.

3. Only few facts need to be stated in order to appreciate the controversy. The petitioners are tenants of a plot of land belonging to the lst respondent trust. The respondent nos. 2 to 2l are the trustees of the said trust. The respondents have filed the present suit for eviction against the petitioners on the ground that the trust requires the suit premises bonafide and reasonably for the purposes of the trust. After receipt of the summons the petitioners appeared before the court on 20.3.2003. On l3.6.2003 order of no written statement came to be passed as written statement was not filed within 90 days. The lst petitioner is an aged widow and the 2nd petitioner is her son. According to the petitioners they could not file the written statement in time because the documents could not be collected for the preparation of the written statement and petitioners were unable to give instructions to their lawyer. By their application Exh.19 they prayed for setting aside the order of no written statement. By the impugned order this application came to be rejected.

4. Mr. Borkar, learned counsel appearing for the petitioners submitted that the Apex Court has held that the provisions of Order 8 rule l of CPC are

directory and the power of the court to take written statement on record though filed beyond the time provided under Order 8 rule l is not taken away. He submitted that the petitioners are running a flour mill in the suit premises and their family is wholly dependant on the income from the said flour mill. He submitted that the explanation given by the petitioners for not filing the written statement cannot be regarded as frivolous or untenable and having regard to the facts of the case the trial court ought to have accepted the written statement. On the other hand Mr.Katikar, learned counsel appearing for respondents, submitted that there is delay of l5 months in filing the written statement and no sufficient cause has been made out for condonation of the delay and therefore there is no reason to interfere with the impugned order.

5. It is true that Order 8 rule l after amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision, however, does not deal with the power of the Court and also does not specifically take away the power of the Court to take written statement on record

though filed beyond the time as provided for. Order 8 rule l intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of case causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The power of court to extend the time under Order 8 rule l is not completely taken away by amendment made to Order 8 rule l,however, departure therefrom would be by way of exception. (See Rani Kusum Vs.Kanchan Devi; A.I.R.2005 SC 3304)

6. The present case is not a case where the petitioners can be said to be adopting dilatory tactics or delaying the disposal of case by praying for frequent adjournments. Having considered the submissions made at the Bar, in my opinion, the delay in filing the written statement deserves to be condoned. The impugned order of the trial Court is, therefore, quashed and set aside. Application Exh l9 stands granted. The trial court is directed to take the written statement on record and proceed with the suit in accordance with law and dispose of the same expeditiously. Rule is accordingly made absolute.